

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN DIVISION**

IN RE: VALSARTAN,
LOSARTAN, AND
IRBESARTAN PRODUCTS
LIABILITY LITIGATION

No. 1:19-md-2875-RBK
Hon. Robert B. Kugler
Hon. Karen M. Williams

(Document Filed Electronically)

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants' Executive Committee, on behalf of the undersigned Defendants, submits this response to Plaintiffs' Notice of Supplemental Authority (Dkt. [2125](#)) and states as follows:

Plaintiffs' reliance on *In re Juul Laboratories, Inc., Marketing, Sales Practices, and Products Liability Litigation*, No. 19-md-2913 (N.D. Cal.), is misplaced. The *Juul* certification order is inapposite to the pending motions for several reasons. *First*, the classes certified in *Juul* are not comparable to the classes Plaintiffs seek to have certified here. The *Juul* court certified two nationwide classes under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 ("RICO"), and two single-state California classes. Plaintiffs here, by contrast, have no nationwide federal causes of action and seek to certify 93 consumer subclasses, most of which are multi-state and include consumers from up to 30 states. *Juul* did

not involve the certification of any multi-state classes or classes of the type that Plaintiffs are seeking to certify here, and consequently presents a very distinct set of class certification issues peculiar to nationwide RICO classes and single-state California consumer classes.

Second, the damages model utilized in *Juul* is completely different from the model used by Plaintiffs. The *Juul* plaintiffs relied on a conventional conjoint analysis to assess damages—a model that has been extensively evaluated and discussed in precedent. Plaintiffs here, by contrast, rely on a novel “economic worthlessness” damages model, which, as discussed in Defendants’ prior briefing, is both unreliable and inconsistent with the law of many states. The differences between the two render the certification analysis applied in *Juul* inapplicable here.

Third, the plaintiffs in *Juul* were assisted in obtaining certification by California’s presumption of reliance. As discussed in Defendants’ prior briefing, the vast majority of states require individualized inquiry into reliance when assessing class certification and, when they recognize a presumption of reliance, require individualized inquiry to rebut the presumption. That is a significant distinction preventing *Juul*’s application outside of California.

Fourth, the facts of *Juul* are markedly different from the facts of this case. *Juul* involved a nationwide campaign of alleged deceptive marketing of e-cigarettes as less addictive, facts that are in no way analogous to the facts at play in this case.

Put simply, *Juul* is highly distinguishable from this case and offers no support for Plaintiffs' pending motions for class certification, which Defendants respectfully request the Court denies.

Dated: July 14, 2022

Respectfully Submitted:

By: /s/ Gregory E. Ostfeld

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2022, I caused a copy of the foregoing document to be served on all counsel of record via CM/ECF.

/s/ Gerond J. Lawrence

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